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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

ELISKA WIRELESS VENTURES LICENSE)
SUBSIDIARY I, L.L.C.)Petition for Determination of the Public Interest)
Under Section 310(b)(4) of the Communications)
Act of 1934, as Amended, to Permit Certain)
Indirect Foreign Ownership in Personal)
Communications Services Licenses)

00-187

To: Chief, International Bureau
Chief, Wireless Telecommunications Bureau

PETITION FOR DECLARATORY RULING
UNDER SECTION 310(b)(4) OF THE
COMMUNICATIONS ACT OF 1934, AS AMENDED

Pursuant to Section 1.2 of the Commission's rules, 47 C.F.R. Section 1.2, Eliska Wireless Ventures License Subsidiary I, L.L.C. ("Eliska License Sub") hereby respectfully requests a declaratory ruling that the proposed acquisition by Deutsche Telekom AG ("DT") of the 49.9% equity interest that Powertel, Inc. ("Powertel") will soon hold in Eliska License Sub's ultimate parent corporation is consistent with the public interest standard established by Section 310(b)(4) of the Communications Act of 1934, as amended, 47 U.S.C. § 310(b)(4).

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Background

On December 13, 2000, the Commission granted its consent to Eliska License Sub's acquisition of eight C Block PCS licenses from DiGiPH PCS, Inc. ("DiGiPH"). *See In re DiGiPH PCS, Inc. and Eliska Wireless Ventures License Subsidiary I, L.L.C.*, File No. 0000151639, *Memorandum Opinion and Order*, DA 00-2757 (rel. December 13, 2000). As explained in the December 13, 2000 order, Eliska License Sub is a limited liability corporation formed under the laws of the state of Delaware. It is a wholly-owned subsidiary of Eliska Wireless Ventures I, Inc. ("Eliska Ventures"), a Delaware corporation which in turn is wholly-owned by EWV Holding Company, Inc. ("EWV Holding"), a Delaware corporation. The assignment of the DiGiPH licenses to Eliska License Sub is scheduled to be consummated on January 31, 2001.

As approved by the Commission, three entities will, upon consummation of the assignment, hold ownership interests in EWV Holding. Eliska Wireless Investors I, L.P. ("Eliska Investors"), an Alabama limited partnership, will hold a 60% voting and 20% equity interest. Powertel, a Delaware corporation, will hold a 24.95% voting and 49.9% equity interest. Sonera Holding B.V. ("Sonera"), a company organized under the laws of the Netherlands, will hold a 15.05% voting and 30.1% equity interest.¹ As described more fully in the DiGiPH assignment application, the entity in control of EWV Holding -- Eliska Investors -- has one general partner (Eliska Wireless, Inc.) and two limited partners (the L.T. Hayles Trust and the J.R. Hayles Trust). The general partner is a Delaware corporation, and its stock is owned and

¹ It is anticipated that Sonera's ownership interest in Powertel will result in Sonera's direct and indirect equity interest in EWV Holding totaling 35.99%. In the December 13, 2000 *Memorandum Opinion and Order*, the Commission granted approval for Sonera to hold up to that amount of equity interest in EWV Holding.

voted exclusively by U.S. citizens. The trustee and beneficiaries of the two limited partner trusts also are U.S. citizens.

As set forth in an application filed with the Commission on September 18, 2000, Powertel has entered into an Agreement and Plan of Merger that, if consummated, would give DT ultimate control of Powertel. *See* Application [of Powertel and DT] for Transfer of Control and Petition for Declaratory Ruling (“Powertel-DT Merger Application”) (File No. 0000214432). DT is a corporation organized and existing under the laws of the Federal Republic of Germany.² If consummated, a merger of DT with Powertel would result in DT acquiring Powertel’s 24.95% voting and 49.9% equity interest in EWV Holding. This petition seeks approval for such additional foreign ownership in EWV Holding by DT.

Argument

In analyzing proposed indirect foreign investments in PCS licensees, the Wireless and International Bureaus have been “guided . . . by the U.S. Government’s commitment under the World Trade Organization (“WTO”) Basic Telecommunications Agreement, which seeks to promote global markets for telecommunications so that consumers may enjoy the benefits of competition.” *Aerial Communications, Inc.*, DA 00-730 (IB/WTB rel. Mar. 31, 2000), at ¶ 9. The Commission accordingly adheres to the principles that “additional foreign investment can promote competition in the U.S. market,” and that “the public interest will be served by permitting more open investment by entities from WTO Member countries in U.S. common

² Additional information regarding the ownership of DT can be found in the application filed with the Commission on September 18, 2000 in connection with the proposed acquisition by DT of VoiceStream Wireless Corporation (“VoiceStream”). *See* Application [of VoiceStream and DT] for Transfer of Control and Petition for Declaratory Ruling (“VoiceStream-DT Merger Application”) (File No. 0000211827). As a result of DT’s mergers with VoiceStream and Powertel, the German government’s total interest in DT will be reduced to approximately 45%. *See* Reply in Support of Applications for Consent to Transfer of Control, filed January 8, 2001 by DT, VoiceStream and Powertel in IB Docket No. 00-187, at p. 37. Thus, upon DT’s acquisition of Powertel’s interest in EWV Holding, the German government’s indirect interest in Eliska License Sub (through DT) would be only approximately 22.5%. *See BBC License Subsidiary, L.P.*, 10 FCC Rcd 10968 (1995), at paras. 22-26.

carrier wireless licensees.” *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, 12 FCC Rcd 23891, 23939, ¶ 111 (1997). Based on these principles, the Commission has adopted a “strong presumption that no competitive concerns are raised by . . . indirect foreign investment[s] from WTO Member countries.” *VoiceStream Wireless Corp.*, FCC 99-53 (rel. Feb. 15, 2000), at ¶ 16.

That strong presumption applies here, because DT’s home country -- Germany -- is a WTO member. The VoiceStream-DT and Powertel-DT Merger Applications demonstrate that the presumption requires approval of DT’s proposed acquisition of 100% of the stock of the parents of the VoiceStream and Powertel PCS subsidiaries, particularly in light of the overwhelmingly procompetitive nature of those transactions in providing those licensees with the resources they need to compete more effectively with their much larger and better capitalized competitors. See VoiceStream-DT Merger Application at 24-29, 34-43; Powertel-DT Merger Application at 22-24. These considerations certainly apply with no less force in the instant context, where the Powertel-DT merger would result in DT acquiring a non-controlling investment in EWV Holding. Thus, in the event the Commission finds that DT’s acquisitions of VoiceStream and Powertel are in the public interest, DT’s proposed non-controlling investment in EWV Holding clearly should be approved as well.

Conclusion

For the reasons stated above, the Commission should issue the requested ruling that it is in the public interest for DT to acquire the indirect, non-controlling investment in Eliska License Sub described above.

Respectfully submitted,

ELISKA WIRELESS VENTURES LICENSE
SUBSIDIARY I, L.L.C.

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January 24, 2001

CERTIFICATE OF SERVICE

I, LaVon E. Stevens, a secretary with the law firm of Wilkinson Barker Knauer, LLP, hereby certify that on this 24th day of January, 2001, I caused the foregoing Petition for Declaratory Ruling to be hand delivered to the following:

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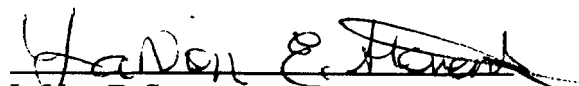
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